D.B. CIVIL SPECIAL APPEAL (W) NO.678/2007

M/s Mohata Construction & Anr.

Vs.

Minimum Wages Act-cum-Regional Labour Commissioner and Anr.

Date of Judgment :: 13.12.2007

HON'BLE THE ACTING CHIEF JUSTICE MR. RAJESH BALIA
HON'BLE MR. JUSTICE BHANWAROO KHAN

Mr. S.N. Trivedi, for the appellants.
Mr. Arvind Samdariya, for the respondents.

Heard learned counsel for the parties. We are satisfied that the appellants-petitioners' claim at-least to be heard on merit ought not to be defeated on hyper-technical ground. A demand has been raised against the petitioners-appellants under the Minimum Wages Act alleging that the appellants have paid less than minimum wages to 37 persons wages and to 9 persons, who having been required to work on Sunday, remain without payment of overtime wages. The demand has been granted ex-parte.

The said ex-parte order had been subjected to challenge first time through S.B. Civil Writ Petition No.4295/2002. The preliminary objection raised by the respondent Enforcement Officer that the petitioner has remedy of moving an application before the learned Authority itself for setting aside the ex-parte proceedings under provisions of

Rule 29(4) of the Minimum Wages Rules found favour with the learned Single Judge and by order dated 23.2.2004 the petitioners were relegated to avail the remedy by filing the application under Rule 29 (4) of the Rules.

The petitioners moved such application within time stated by the learned Single Judge in his order dated 23.2.2004 and the application for setting aside ex-parte order was submitted before the Enforcement Officer, Bikaner where the authority under the Minimum Wages Act sits periodically and used to visit and hear the matters pending at Bikaner. However, when this application after some resistance by the Enforcement Officer, was sent to the Minimum Wages Authority, Bikaner, the period fixed by the court has lapsed for making such application and again the application was not decided on merit but was rejected on the ground of it being not filed within time fixed by the Court. This led to filing of the present writ petition.

The learned Single Judge has upheld the contention of the learned counsel for the respondent that since the application has not been filed within limitation, the same has rightly been rejected. There is no dispute that the consideration was made earlier by the respondent ex-parte without notice to the other side.

We are of the opinion that this consistent resistance on the part of the respondent Enforcement Officer not to pass an appropriate order through participating in the proceedings and keep the petitioners out of hearing is not justified.

The law is well settled that as far as possible, the petitioners right for hearing on merit should not be denied on hyper -technical ground. In that view of the matter, we are of the opinion that the appeal deserves to be allowed and the respondents be directed to decide the application under Rule 29(4) on merit after giving opportunity of hearing.

Accordingly, the appeal is allowed. The judgment under appeal is set aside and order passed by the authority under Rule 29(4) is also set aside. The case is sent back to the authority for deciding the said application on merit after giving opportunity of hearing to the appellants.

No costs.

[BHANWAROO KHAN],J. [RAJESH BALIA],ACTG.CJ.

RM/